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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,240	05/13/2002	Jorg Peter Schur	von Kreislser.018	1893
110	7590	10/06/2005	EXAMINER	
DANN, DORFMAN, HERRELL & SKILLMAN 1601 MARKET STREET SUITE 2400 PHILADELPHIA, PA 19103-2307			WINSTON, RANDALL O	
			ART UNIT	PAPER NUMBER
			1655	

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/019,240

Applicant(s)

SCHUR, JORG PETER

Examiner

Randall Winston

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-13, 15-19 and 22-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-13, 15-19 and 22-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election of species of a propylene glycol, a benzyl alcohol, tannins and a lactic acid in the reply filed on 06/09/2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the election of species requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1-6, 8-13, 15-19, 22-31 will be examined on the merits.

Claims 7, 14 and 20-21 are acknowledged to be canceled.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3,8,16, 29,30 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitation "benzyl alcohol." There is insufficient antecedent basis for this limitation in the claim. (Does applicant mean that the claim should read an antimicrobial composition further comprises of benzyl alcohol?)

Claim 8 recites the limitation "benzyl alcohol." There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "the water." There is insufficient antecedent basis for this limitation in the claim.

Claim 29 recites the limitation "benzyl alcohol." There is insufficient antecedent basis for this limitation in the claim. (Does applicant mean that the claim should read an antimicrobial composition further comprises of benzyl alcohol?)

Claim 30 recites the limitation "benzyl alcohol." There is insufficient antecedent basis for this limitation in the claim.

All other claims depend directly or indirectly from the rejected claims and are, therefore, also rejected under 35 U.S.C. 112, second paragraph for the reasons set forth.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-13, 15-19, 22-31 are rejected under 35 U.S.C. 103 as being unpatentable over Andrews (US 5569461) in view of Howell et al. (US 6608102), Varga J. (Derwent ACC-NO 1976-72203X, see abstract), Hopp et al. (US 4110430), Isaacs (US 6033705) and Beerse et al. (US 6284259).

Applicant's claims a method for disinfection of air to reduce the concentration of germs comprising the distributing or atomizing of an antimicrobial composition wherein the antimicrobial composition is free from ethanol and isopropanol and wherein the

antimicrobial composition comprises propylene glycol, tannins, lactic acid, benzyl alcohol and further comprises hydrocinnamic alcohol, additional GRAS flavoring agents such as essential oils (see, e.g. claim 10) and an emulsifier (see, e.g. claim 17).

Andrews teaches an antimicrobial composition comprising propylene glycol and lactic acid for disinfecting. Andrews does not teach the other claimed active ingredient such as tannins, a benzyl alcohol, a hydrocinnamic alcohol, additional GRAS flavoring agents such as essential oils and an emulsifier contained within its antimicrobial composition.

Howell et al. beneficially teach (see, e.g., contained with its patent, "Other Reference Publications", Scalber et al.) tannins to have antimicrobial properties.

Varga J beneficially teach (see, e.g. abstract) a benzyl alcohol to have antimicrobial and/or antibacterial properties.

Hopp et al. beneficially teach (see, e.g., column 1, lines 21-29 and lines 60-65) a hydrocinnamic alcohol to have antimicrobial and/or antibacterial properties.

Issacs beneficially teach (see, e.g., column 10, lines 23-29) an emulsifier may be added to a compound to enhance its antimicrobial effect.

Beerse et al. beneficially teach (see, e.g. column 9, lines 19-39) essential oils to have antimicrobial and/or antibacterial properties.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Andrews' antimicrobial composition to include the other claimed active ingredients beneficially taught by Howell, Varga J, Hopp, Isaacs and Beerse because the combined above references would create an improved claimed

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antimicrobial composition wherein the improved claimed composition would intrinsically disinfect the air when reducing the concentration of microbial and/or bacteria germs within the air. Furthermore, the adjustment of other conventional working conditions (e.g. the claimed concentrations of the antimicrobial composition within the air, the type of antimicrobial system and/or spray design and the substitution of known bacteria for one another to be treated and/or reduced), is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

Accordingly, the claimed invention was prima facie obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of evidence to the contrary

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Winston whose telephone number is 571-272-0972. The examiner can normally be reached on 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Susan D. Coe
9-29-05

**SUSAN COE
PRIMARY EXAMINER**